

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED  
2008 JUL 15 PM 4:05  
CLERK US DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY 1/4 DEPUTY

MAX WELLS,

PLAINTIFF,

vs.

SMITHKLINE BEECHAM  
CORPORATION,

DEFENDANT.

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CAUSE NO. A-06-CA-126-LY

**DEFENDANT'S UNOPPOSED MOTION TO FILE UNDER SEAL MOTION TO  
PRECLUDE PROPOSED EXPERT TESTIMONY PURSUANT TO FEDERAL  
RULES OF EVIDENCE 702 AND 703 AND FOR SUMMARY JUDGMENT**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Defendant SmithKline Beecham Corporation d/b/a GlaxoSmithKline ("GSK"), files this Unopposed Motion to File Under Seal its *Motion to Preclude Proposed Expert Testimony Pursuant to Federal Rules of Evidence 702 and 703 and for Summary Judgment* ("Daubert/Havner Motion"), and, in support, respectfully shows the Court as follows:

1. The *Daubert/Havner* Motion refers to deposition transcripts and other evidence that have been designated by one or more party as "Confidential" pursuant to the Court's October 23, 2007 Confidentiality and Protective Order ("Protective Order").

2. Pursuant to paragraph 14 of the Protective Order, documents identified by the parties as "Confidential" must be filed under seal. By separate motion, GSK has requested that certain depositions and documents referred to in its *Daubert/Havner* Motion be submitted under seal, and sealing the *Daubert/Havner* Motion itself is necessary to avoid disclosing information designated by one or more party as "Confidential."

3. In accordance with the Protective Order, the *Daubert/Havner* Motion will be provided to the Court under separate cover and should be filed under seal.

4. Counsel for GSK has conferred with counsel for the Plaintiff and was informed that Plaintiff does not object to this request.

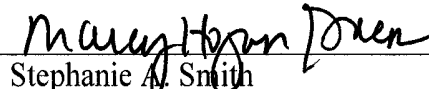
#### **CONCLUSION AND PRAYER**

For the foregoing reasons, Defendant SmithKline Beecham Corporation d/b/a GlaxoSmithKline requests that the Court order that *Defendant's Motion to Preclude Proposed Expert Testimony Pursuant to Federal Rules of Evidence 702 and 703 and for Summary Judgment*, be filed under seal and grant GSK all other further relief to which it is entitled

Dated: July 15, 2008

Respectfully submitted,

FULBRIGHT & JAWORSKI L.L.P.



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*Counsel for Defendant SmithKline Beecham  
Corporation d/b/a GlaxoSmithKline*

### CERTIFICATE OF CONFERENCE

Counsel for Defendant SmithKline Beecham Corporation d/b/a GlaxoSmithKline conferred with counsel for Plaintiff on July 10, 2008, regarding *Defendant's Unopposed Motion to File Under Seal its Motion to Preclude Proposed Expert Testimony Pursuant to Federal Rules of Evidence 702 and 703 and for Summary Judgment*, and was informed that Plaintiff does not oppose the motion.

  
Marcy Hogan Greer

**CERTIFICATE OF SERVICE**

I hereby certify that on the 15th day of July, 2008, I filed the original and one copy of the foregoing with the Clerk of Court and served copies on the following counsel of record by first-class U.S. mail, postage prepaid:

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\_\_\_\_\_  
Marcy Hogan Greer

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MAX WELLS,

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CAUSE NO. A-06-CA-126-LY

**ORDER GRANTING DEFENDANT'S MOTION TO FILE MOTION TO PRECLUDE  
PROPOSED EXPERT TESTIMONY PURSUANT TO FEDERAL RULES OF  
EVIDENCE 702 AND 703 AND FOR SUMMARY JUDGMENT UNDER SEAL**

Now before the Court is the Unopposed Motion of Defendant SmithKline Beecham Corporation d/b/a GlaxoSmithKline to File Under Seal its Motion to Preclude Proposed Expert Testimony Pursuant to Federal Rules of Evidence 702 and 703 and for Summary Judgment.

This Motion to File Under Seal is GRANTED.

The Clerk of the Court is ordered to file and maintain under seal Defendant SmithKline Beecham Corporation d/b/a GlaxoSmithKline's Motion to Preclude Proposed Expert Testimony Pursuant to Federal Rules of Evidence 702 and 703 and for Summary Judgment until further order of this Court.

SIGNED AND ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
LEE YEAKEL  
UNITED STATES DISTRICT JUDGE